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SERVICE DATE – DECEMBER 2, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42170

KINGSBURY ELEVATOR, INC.

v.

GRAND TRUNK WESTERN RAILROAD COMPANY

Docket No. EP 346 (Sub-No. 24)¹

RAIL GENERAL EXEMPTION AUTHORITY—MISCELLANEOUS MANUFACTURED
COMMODITIES

Decided: December 1, 2020

On August 6, 2020, in Docket No. NOR 42170, Kingsbury Elevator, Inc. (KE), filed a complaint against Grand Trunk Western Railway Company (GTW) alleging a number of violations of 49 U.S.C. subtitle IV part A related to GTW's transportation of canola meal, corn gluten meal, gluten feed pellets, and fertilizer. KE filed at the same time a petition in Docket No. EP 346 (Sub-No. 24) for partial revocation of the class exemption established in Rail General Exemption Authority—Miscellaneous Manufactured Commodities, 6 I.C.C.2d 186 (1989), because it claimed that the commodities at issue (except fertilizer) are exempted from Board regulation under this class exemption.² On October 5, 2020, KE submitted an amendment to its complaint along with a motion for leave to amend.³

On October 26, 2020, GTW filed an answer to the amended complaint in Docket No. NOR 42170 and a reply to KE's petition for partial revocation in Docket No. EP 346 (Sub-No. 24) asserting that the commodities at issue are not covered by the class exemption. On November 9, 2020, in response to a Board decision, KE filed a reply stating that it agrees with GTW that the petition for partial revocation is unnecessary because the commodities at issue are

¹ These proceedings have not been consolidated but are being addressed in the same decision for administrative convenience.

² On August 13, 2020, and again on September 25, 2020, the Board extended by 30 days the deadlines to answer the complaint and reply to KE's petition at the request of the parties, who stated they were seeking additional time to attempt to resolve the matters in KE's complaint.

³ The Board granted the unopposed motion in a decision served on November 9, 2020.

not encompassed by the class exemption.⁴ The Board interprets KE's statement as a request to withdraw its petition and will grant the request.

On November 5, 2020, KE filed a report in Docket No. NOR 42170 pursuant to 49 C.F.R. § 1111.11(a) setting forth a proposed procedural schedule. GTW filed its report proposing a procedural schedule on November 13, 2020. Although the parties agree on most aspects of the procedural schedule, they disagree on one: GTW incorporates a period for Board-ordered mediation, while KE does not. As KE does not consent to Board-sponsored mediation, this decision does not order it.⁵ See 49 C.F.R. § 1011.7(a)(2)(xvii). Accordingly, the Board will adopt the following procedural schedule:

Discovery Closes	March 2, 2021
KE's Opening Statement	April 30, 2021
GTW's Reply Statement	June 30, 2021
KE's Rebuttal Statement	July 30, 2021

It is ordered:

1. KE's November 9, 2020 reply filed in Docket No. NOR 42170 will be added to the record in Docket No. EP 346 (Sub-No. 24).
2. KE's request to withdraw its petition for partial revocation in Docket No. EP 346 (Sub-No. 24) is granted and the proceeding is closed.
3. The procedural schedule described above is adopted.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

⁴ Although KE filed its reply only in Docket No. NOR 42170, the Board will also place the reply in Docket No. EP 346 (Sub-No. 24), as it relates to the petition filed in that docket and was responsive to the Board's November 9, 2020 decision served in both dockets.

⁵ KE and GTW are reminded that the Board's Rail Customer and Public Assistance program (202-245-0238; rcpa@stb.gov) is available to stakeholders to facilitate informal, private-sector resolution, without litigation, wherever possible.